

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSHUA TAFT,

Plaintiff,

v.

RICK WHITNEY, ALLEGANY COUNTY
SHERIFF, et al.,

Defendants.

DECISION & ORDER

22-CV-6279FPG

Plaintiff Joshua Taft filed this action against defendants pursuant to 42 U.S.C. § 1983, alleging that they retaliated against him in violation of his First Amendment rights in connection with his employment at, and separation from, the Allegany County Sheriff's Office.¹ (Docket # 1). On September 5, 2023, Taft filed an Amended Complaint, and, after the district rendered a determination on their motion to dismiss, defendants filed an answer to the Amended Complaint on April 23, 2024. (Docket ## 30, 43, 48). On April 25, 2024, this Court conducted a telephone scheduling conference. (Docket ## 48, 49). Following the conference, the Court issued a scheduling order setting a deadline of June 28, 2024, for the filing of any motions to join parties or to amend the pleadings. (Docket # 50). On June 28, 2024, Taft mailed a proposed second amended complaint to the Court for filing, without first seeking or receiving leave of the Court to amend his complaint.² (Docket # 58).

¹ Taft also asserted that defendants violated his constitutional rights to due process and equal protection, as well as claims pursuant to 28 U.S.C. § 1985(3), 28 U.S.C. § 1986, and New York Civil Service Law Section 75, but those claims were dismissed by the district court. (Docket ## 1, 30, 43).

² The proposed second amended complaint was received by the Court on July 1, 2024, and was filed on the Court's electronic docket on July 2, 2024. (Docket # 58)

Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure, a plaintiff is permitted to amend his complaint without leave of the Court if the amended complaint is filed within either 21 days after service of the original complaint or 21 days after defendants serve an answer to the complaint or a motion under Rule 12. *See* Fed. R. Civ. P. 15(a). After those deadlines, the plaintiff can only amend his pleading with the opposing party's written consent or after seeking leave of the Court. *See* Fed. R. Civ. P. 15(a)(2).

Although Taft complied with June 28th deadline for amendments set forth in this Court's scheduling order (Docket # 50), because the proposed second amended complaint was filed more than 21 days after defendants filed their answer, Taft was required to seek leave of the Court prior to filing the proposed second amended complaint. *See* Fed. R. Civ. P. 15(a)(2). Because Taft did not first obtain leave of the Court, the Amended Complaint filed on September 5, 2023 (Docket # 30), remains the operative pleading at this time.

Given Taft's *pro se* status, the Court will permit Taft additional time to file a motion seeking leave to file the proposed second amended complaint. Any such motion should clearly identify the changes Taft seeks to make to the Amended Complaint. In other words, Taft must identify each and every new claim he seeks to assert (*e.g.*, the specific nature of the claim and the defendant(s) against whom he seeks to assert it) and the factual basis for the claim.

Additionally, Taft must identify each new defendant he seeks to add and the claim(s) he seeks to

assert against the new defendant(s). Any such motion seeking leave to file the proposed second amended complaint must be filed on or before **August 1, 2024**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
July 2, 2024